

APR 17 2002

**SENSITIVE**

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

PRE-MUR 400

DATE RECEIVED: 04/26/01

DATE ACTIVATED: 07/13/01

STATUTE OF LIMITATIONS: 07/13/05

**SOURCE:** Kentucky Office of Attorney General

**RESPONDENTS:** Kentucky State District Council of Carpenters  
and Steve Barger, as treasurer  
Mike Fleitz  
Thomas Schulz  
Don Mitchell  
Daniel Forbis  
Jerry Landers  
Carpenters Legislative Improvement Committee United Brotherhood of  
Carpenters and Joiners and Monte Byers, as treasurer  
Eleanor Jordan for Congress and Christal Williams, as treasurer

**RELEVANT STATUTES:** 2 U.S.C. § 431(8)(A)(i)  
2 U.S.C. § 437g(a)(5)(c)  
2 U.S.C. § 437g(d)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 441b(a)  
2 U.S.C. § 441b( b)(1)  
2 U.S.C. § 441b(b)(2)  
2 U.S.C. § 441b(b)(3)(A)  
2 U.S.C. § 441f  
11 C.F.R. § 100.7(a)(1)(iii)(B)  
11 C.F.R. § 110.4(b)(iii)

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

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COMMISSION  
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**I. GENERATION OF MATTER**

On May 14, 2001, the Federal Election Commission ("the Commission") received a referral from the Kentucky Office of Attorney General ("Kentucky AG") concerning allegations that the Kentucky State District Council of Carpenters ("KSDCC") coerced its members into making campaign contributions, not of their own free will, but under threat of job loss and/or other consequences. Additionally, the referral included allegations that KSDCC members were ordered to work in the campaign offices of the various candidates who were supported by KSDCC, and that union members were required to complete time sheets for such work to reflect "membership education."

This matter was referred to the Commission after the Kentucky AG along with a representative from the local FBI Field Office, interviewed a KSDCC member who came forward regarding the allegations. The respondents were not notified since this matter was referred from an outside agency.<sup>1</sup>

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Applicable Law**

The Federal Election Campaign Act of 1971, as amended, (the "Act") makes it unlawful for any person to make a contribution in the name of another person or knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f. Further, no person shall knowingly help or assist any person in making a contribution in the name of another.

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<sup>1</sup> A number of witnesses who were characterized as being willing to cooperate were identified in follow-up communications with the Kentucky AG. The initial referral, however, indicated that some of these individuals feared physical harm if their names became public, and their names were not included in the referral for that reason. This issue also was raised in a recent unsolicited telephone inquiry to this Office from the KSDCC member whose interview led to the referral. Given this concern, this Office does not plan to identify the KSDCC member who came forward, or those other witnesses, by name in the Factual and Legal Analyses provided to respondents.

2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(iii). The term “contribution” includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal Office. 2 U.S.C. § 431(8)(A)(i).

Pursuant to 2 U.S.C. § 441b(a), labor organizations are prohibited from making contributions or expenditures from their general treasury funds in connection with any federal election, while candidates and their authorized campaign committees are prohibited from knowingly accepting or receiving such contributions. Section 441b(a) further prohibits any officer or director of any labor organization from consenting to such contributions or expenditures.<sup>2</sup> Section 441b(b)(3)(A) makes it unlawful for a separate segregated fund (“SSF”) established by a labor organization to make contributions or expenditures by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of other moneys required as a condition of membership in a labor organization or as a condition of employment. For purposes of Section 441b, a contribution includes “any direct or indirect payment, distribution, loan, advance, deposit, gift of money, or any services, or anything of value” made to a candidate, including all in-kind contributions. 2 U.S.C. § 441b(b)(2) and 11 C.F.R. § 100.7(a)(1)(iii)(B).

The Act addresses violations of the law that are knowing and willful. *See* 2 U.S.C. §§ 437g(a)(5)(C) and 437g(d). The phrase “knowing and willful” indicates that “actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The knowing and willful standard

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<sup>2</sup> The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment or conditions of work. 2 U.S.C. § 441b(b)(1).

requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D. N.J. 1986).

In *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990), the court found that an inference of a knowing and willful violation could be drawn "from the defendants' elaborate scheme for disguising their corporate political contributions" as individual contributions, and that they "deliberately conveyed information they knew to be false to the Federal Election Commission." *Id.* at 214-15. The court also found that the evidence did not have to show that a defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there were "facts and circumstances from which the jury reasonably could infer that [a defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5<sup>th</sup> Cir.), *cert. denied*, 439 U.S. 838 (1989)).

### **B. Factual Summary and Allegations**

KSDCC is the Kentucky body of the United Brotherhood of Carpenters and Joiners of America ("UBC"), representing carpenters and other crafts persons within the state of Kentucky. KSDCC has eight local union offices throughout the state. Steve Barger is the current treasurer and executive secretary of KSDCC.<sup>3</sup> Thomas Schulz was treasurer in 1996 as indicated in the Report of Communication Costs filed with the FEC that year. Don Mitchell is reportedly the statewide political director for KSDCC and is listed on the KSDCC website as an official for Local Union 357. Dan Forbis is listed on the KSDCC website as an official for Local Unions 64 and 357. Jerry Landers is the Director of Organizing for KSDCC.

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<sup>3</sup> This Office has no information regarding the KSDCC President. Steve Barger is mentioned throughout the KSDCC website and KSDCC newsletters as the head of the organization.

[illegible][illegible][illegible][illegible]

<sup>5</sup> The individuals named in the referral as having knowledge of the contribution scheme were not identified on the FEC Disclosure Reports of the Eleanor Jordan for Congress Committee as having made itemized contributions.

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3 According to the referral, the individuals alleged to have committed the actions are Steve  
4 Barger, who is the executive secretary and treasurer for KSDCC, Don Mitchell, who is the  
5 statewide political director for KSDCC, and Thomas Schulz, who is the general counsel and  
6 former treasurer of KSDCC. Other individuals named in the referral as "proponents" of these  
7 activities are Jerry Landers, Dan Forbis and Mike Fleitz. provided the  
8 Kentucky AG and the FBI with the names of eight individuals with knowledge regarding these  
9 allegations who are reportedly willing to cooperate in an investigation of the allegations.

10 **C. Analysis**  
11

12 Based on the above  
13 mentioned information regarding issuance of expense checks to KSDCC members and the  
14 possible use of strike funds, there appears to be evidence that KSDCC was involved in a scheme  
15 to use union funds to make federal contributions in the name of its members which would result  
16 in violations of 2 U.S.C. §§ 441b and 441f. Further, there appears to be evidence that the scheme  
17 was directed and/or consented to by KSDCC officials Steve Barger, Don Mitchell and Thomas  
18 Schulz.  
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22 Further corroboration might be found in the fact that numerous officers of KSDCC's  
23 local union chapters made contributions to Carpenters Legislative on January 27, 2001 and were

1 issued refunds on April 30, 2001. Carpenters Legislative refunded a total of \$ 7,552.00 to  
2 various contributors on that date.

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6 The refunds the KSDCC members received from Carpenter's Legislative were below the  
7 \$200 threshold amount required for itemization. *See* 2 U.S.C. § 434(b)(3)(A). Although the  
8 amount of each individual contribution appears to have been below the \$200 threshold for  
9 itemized reporting,<sup>6</sup> the impact of the aggregated contributions from an unknown number of  
10 KSDCC members, as well as the allegations of coercion support further investigation in this  
11 matter.

12 Accordingly, this Office recommends that the Commission find reason to believe that  
13 the Kentucky State District Council of Carpenters knowingly and willfully violated 2 U.S.C. §§  
14 441b and 441f; and that KSDCC officers Steve Barger, Don Mitchell and Thomas Schulz, who  
15 directed and/or consented to those activities, knowingly and willfully violated 2 U.S.C. §§ 441b  
16 and 441f.

17 Given the evidence regarding numerous KSDCC members receiving refunds of  
18 previously unitemized contributions shortly after this scheme was reported to the Kentucky AG,  
19 this Office also recommends that the Commission find reason to believe that Carpenters  
20 Legislative Improvement Committee United Brotherhood of Carpenters and Joiners and Monte  
21 Byers, as treasurer, knowingly and willfully violated 2 U.S.C. §§ 441b and 441f by accepting  
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<sup>6</sup> The refunds from Carpenter's Legislative were generally in the range of \$20 to \$100 dollars.

contributions made with union funds and contributions made in the name of another.

Given the information that Eleanor Jordan's campaign received contributions from KSDCC, this Office further recommends that the Commission find reason to believe that Eleanor Jordan for Congress and Christal Williams, as treasurer, violated 2 U.S.C. §§ 441b and 441f by accepting contributions made from union funds and by accepting contributions made in the name of another.

Additionally, this Office also recommends that the Commission take no action at this time against, Mike Fleitz, Daniel Forbis, and Jerry Landers, since the available information as to their involvement in the alleged scheme indicates only that they were "proponents" of the activity. If an investigation uncovers information indicating that they played a role in the scheme, this Office will make appropriate recommendations.

### **III. INVESTIGATION**

Many of the facts relevant to this matter are not yet in the Commission's possession. Since this Office was not provided with written documentation or other specifics in the referral from the Kentucky Attorney General's Office, this Office requests that the Commission authorize formal discovery to KSDCC and its officers to obtain additional information about the alleged unlawful acts. This Office seeks to determine whether there are other individuals involved in the scheme and the identity of the KSDCC officials involved. Additionally, this Office requests that the Commission authorize formal discovery to Carpenters Legislative to evaluate its role in this matter.



In order to obtain sufficient information and to assist this Office in its investigation of this matter, we recommend that the Commission approve the attached Subpoenas to Produce Documents and Orders to Provide Written Answers to Respondents KSDCC, Steve Barger, Don Mitchell, Thomas Schulz, and Carpenters Legislative Improvement Committee United Brotherhood of Carpenters and Joiners and Monte Byers, as treasurer. The Subpoenas seek information from 1994 due to information in the referral that the alleged activity began during that year. This Office plans to utilize any information received to determine whether there was a continuing pattern of behavior, but not necessarily for recommending a civil penalty.

This Office intends to pursue informal discovery to determine the facts surrounding the alleged involvement of Eleanor Jordan for Congress in this matter. This Office will contact the individuals identified in the referral as having knowledge of the scheme.

#### IV. RECOMMENDATIONS

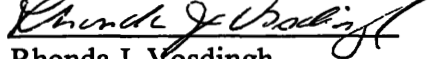
1. Open a MUR.
2. Find reason to believe that the Kentucky State District Council of Carpenters knowingly and willfully violated 2 U.S.C. § 441b and 2 U.S.C. § 441f.
3. Find reason to believe that Steve Barger, Don Mitchell and Thomas Schulz, as officers of the Kentucky State District Council of Carpenters, knowingly and willfully violated 2 U.S.C. § 441b and 2 U.S.C. § 441f.
4. Find reason to believe that Eleanor Jordan for Congress and Christal Williams, as treasurer, violated 2 U.S.C. § 441b and 2 U.S.C. § 441f.
5. Find reason to believe that Carpenters Legislative Improvement Committee United Brotherhood of Carpenters and Joiners and Monte Byers, as treasurer, violated 2 U.S.C. § 441b and 2 U.S.C. § 441f.
6. Take no action at this time against, Daniel Forbis, Jerry Landers, or Mike Fleitz.
7. Approve the Factual and Legal Analyses.

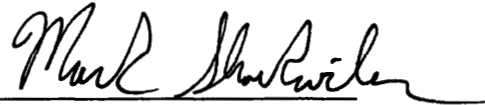
8. Approve the attached Subpoenas to Produce Documents and Orders to Provide Written Answers to KSDCC, Steve Barger, Don Mitchell, Thomas Schulz and Carpenters Legislative Improvement Committee United Brotherhood of Carpenters and Joiners and Monte Byers, as treasurer.

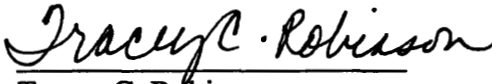
9. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel

4/16/22  
Date

BY:   
Rhonda J. Vosdigh  
Associate General Counsel

  
Mark D. Shonkwiler  
Acting Assistant General Counsel

  
Tracey C. Robinson  
Staff Attorney

Attachments:

1-6 Factual and Legal Analyses  
7-11 Subpoenas and Orders